TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~456.~~ 240

THE UNITED STATES, APPELLANTS,

vs.

RICHARD R. TYERS.

APPEAL FROM THE COURT OF CLAIMS.

FILED DECEMBER 31, 1870.

Dec. 1871

SUPREME COURT OF THE UNITED STATES.

No. 456.

THE UNITED STATES, APPELLANTS,

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RICHARD R. TYERS.

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RICHARD R. TYERS, &c.,
vs.
THE U. S. } 6152.

1 *Petition.—Filed* 18 . , *Clerk.*

United States Court of Claims. term, 18 .

RICHARD R. TYERS, SURVIVING PARTNER OF the late firm of Nott and Company,
against
THE UNITED STATES. } No. .

To the honorable the Court of Claims:

The petition of Richard R. Tyers, now residing in the city of New York, in the State of New York, respectfully represents:

That he is the sole surviving partner of the late American firm of Nott & Company, which firm consisted of William Nott, Luman N. Hitchcock, D. Olyphant Vail, Anthony B. Neilson, W. L. Purdie, and your petitioner, who were, in 1857, trading and doing business in China.

That, during the year 1857, having sustained losses by reason of the capture of a vessel called the "Neva," then being in the waters of China, upon the petition of said Nott and Company, an act for the relief of the said Nott and Company was passed by the Senate and House of Representatives of the United States of America, in Congress assembled, and approved by the President February 22d, 1869, directing the Attorney General of the United States "to examine the claim of Nott & Co., American merchants, trading and doing business in China, against the Chinese government for losses sustained in 1857 by the capture and robbing of the vessel called the 'Neva,' and that if, in his opinion, the said claim ought to be paid, he is hereby authorized and instructed to order the same to be paid, with the rate of interest allowed on other claims from the time of such loss, out of any funds received from the Chinese government under the treaty of 1858 for the payment of losses sustained by American citizens; and that the said amount be paid to the said Nott and Company, or the surviving copartner or copartners, or any person duly authorized to be their agent or attorney, from the fund now held by the Secretary of State; and that the decision of the said Attorney General as to the right of said claimants to be paid, as to the amount to be paid, and as to the parties entitled to receive the same, shall be final and conclusive."

And your petitioner further sheweth that the United States, under the treaty of 1858, received from the Chinese government a large sum of money for the payment of losses sustained by American citizens; and that the said Government of the United States still holds and has in its possession the sum of two hundred thousand dollars, in coin, to be applied, as aforesaid, to the payment of losses sustained by American citizens as aforesaid.

And your petitioner further sheweth that the Honorable William M. Evarts, the then Attorney General of the United States, having examined into the said claim, on the 3d day of March, in the year 1869, by the authority of the said act of Congress, determined, adjudged, and ordered the sum of sixteen thousand one hundred and ninety-seven dollars and sixty cents, in gold, with interest thereon at the rate of twelve per cent. per annum, from the last day of October, in the year 1857, to the 3d day of March, in the year 1869, to be paid to your

petitioner or his duly authorized attorney, "out of any funds received from the Chinese government by the Government of the United States under the treaty of 1858, for the payment of losses sustained by American citizens," a copy of which award is hereto annexed, and marked Exhibit "A," which your petitioner prays may be taken as part of this his petition.

2 And your petitioner further sheweth that he duly appointed and authorized George M. Miller, esquire, of the city of New York, to receive the amount so awarded by the Attorney General of the United States, from the officers of the United States having in charge the funds received from the Chinese government for the payment of losses sustained by American citizens. That the said George M. Miller, on or about the 13th day of March, 1869, at the city of Washington, as the duly authorized agent and attorney of your petitioner, duly demanded of and from the officers of the Government of the United States having in charge the funds so received as aforesaid, the payment of the said award as aforesaid, amounting, principal and interest, on the day and year last aforesaid, to the sum of thirty-eight thousand two hundred and forty-two dollars and fifty-three cents, in gold, or its equivalent, according to the terms and provisions of the said award.

And your petitioner further sheweth that the equivalent, in payment of the award as aforesaid, for the sum of thirty-eight thousand two hundred and forty-two dollars and fifty-three cents of gold in United States Treasury notes, commonly known as "greenbacks," was, on the said 13th day of March, 1869, the sum of fifty thousand one hundred and forty-five dollars and fifty-one cents, which your petitioner, under the act of Congress, and by virtue of the award hereinbefore stated, was justly entitled to have and receive from the United States. Yet the officers of the United States having in charge, as aforesaid, the funds so received, as aforesaid, from the Chinese government, refused to pay the said sum, or any other than the sum of thirty-eight thousand two hundred and forty-two dollars and fifty-three cents in United States Treasury notes, commonly known as "greenbacks," then and there leaving a balance due to your petitioner in such Treasury notes of eleven thousand nine hundred and two dollars and ninety-seven cents.

And your petitioner further showeth that the said sum of $38,245 23 was paid to the said George M. Miller in such Treasury notes; but he, the said George M. Miller, would not and did not accept the same as full payment of the said award, and at the time of such payment protested that he would not accept the said Treasury notes in full satisfaction of the said award.

Your petitioner further sheweth that the before-mentioned parties were members composing the American firm of Nott and Company, and that they did not, either collectively or individually, ever do anything opposed to the Government of the United States, and that he did not, nor did any member of the firm, to his knowledge, during the lifetime of any such member, ever aid, abet, or give encouragement to rebellion against said Government; and he prays the judgment of this honorable court for the said sum of eleven thousand nine hundred and two dollars and ninety-seven cents, with interest thereon from the 13th day of March, in the year 1869, and for such other and further relief as the nature of the case may show he is entitled to.

(S'd) RICH'D R. TYERS.

3 STATE OF NEW YORK,
City and County of New York, ss:

RICHARD R. TYERS, being duly sworn, deposeth that he is the claimant in the foregoing petition; that no assignment or transfer of said claim, or any part thereof, or any interest therein, has been made, except as in said petition is stated; that claimant is justly entitled to the amount therein claimed from the United States, after allowing all just credits and offsets, and that he believes the facts as stated in said petition are true.

(S'd) RICH'D R. TYERS.

Sworn and subscribed to before me, a notary public of the State of New York, duly commissioned and sworn. Witness my hand and official seal, this first day of March, A. D. 1870.

[SEAL.] (S'd) JOHN A. WRIGHTE,
Notary Public.

Claimant's address is, 140 Water street, New York City.
Claimant's solicitor,

CHARLES F. PECK,
No. 1115 Pennsylvania Avenue,
Washington, District of Columbia.

EXHIBIT A.

Whereas, by an act of Congress, passed on the 22d day of February, 1869, the Attorney General is directed to examine the claim of Nott & Company, American merchants trading and doing business in China, against the Chinese government, for losses of coin sustained in 1857 by the capture and robbery of the vessel called the "Neva," and if, in his opinion, the said claim ought to be paid, he is by the said act authorized and instructed to order the same to be paid, with the rate of interest allowed on other claims from the time of such loss, out of any funds received from the Chinese government under the treaty of 1858 for the payment of losses sustained by American citizens; and

Whereas, I have examined into the said claim, and am satisfied that the said firm of Nott & Company suffered a loss of coin in October, 1857, to the amount of $16,197 60 in specie value, and that said loss occurred during the progress of a war between China and Great Britain, while the said coin was laden on board the schooner "Neva," a vessel of Great Britain, one of the belligerents in said war, and that the circumstances under which the said vessel was attacked and overpowered by Chinese, and the said specie of Nott & Company, neutrals in the war, and American citizens, plundered and appropriated by the attacking party, and wholly lost to the said Nott & Company, were such as made the act one of irregular warfare, for which recourse might properly be claimed against the Chinese government for indemnity to the said Nott & Company; and therefore the said claim of Nott & Company, being just in itself, and definitely and clearly established, ought, within the intent and meaning of the said act of Congress, to be paid from the funds or means provided under the treaty of 1858 with the Chinese government for the payment of losses sustained by American citizens; and

Whereas, twelve per centum per annum was and has been the rate of interest allowed on other claims under the said treaty:

Now, therefore, I, the Attorney General of the United States,

4 by authority of the said act of Congress, do determine and adjudge, that the said claim of Nott & Company for the sum aforesaid, and with the rate of interest thereon aforesaid from the time of such loss until the date of this my determination, should be paid out of any funds received by the Government of the United States from the Chinese government, under the treaty of 1858, for the payment of losses sustained by American citizens; and I do further determine, that Richard R. Tyers, of the city of New York, is the sole surviving copartner of the firm of Nott & Company, as existing at the time of the said loss, and that he is entitled to receive the payment which I have determined should be made for said loss.

And I do, therefore, in pursuance of the authority and instruction by the said act to me in that behalf given, order the said sum of $16,197 60, in gold, with interest thereon at the rate of twelve per centum per annum, from the last day of October, in the year 1857, to the third day of March, in the year 1869, to be paid to the said Richard R. Tyers, or his duly authorized attorney, out of any funds received from the Chinese government by the Government of the United States under the treaty of 1858, for the payment of losses sustained by American citizens.

In witness whereof I have hereunto set my hand this third day of March, in the year 1869.

WM. M. EVARTS,
Attorney General.

(Indorsed:) Filed March 2, 1870, , clerk. 6152. Petition. United States Court of Claims, term, 18 . Richard R. Tyers, surviving partner of the late firm of Nott & Co., versus The United States. Charles F. Peck, solicitor for claimant, 1115 Pennsylvania av'e, Washington, D. C.

5 In the United States Court of Claims, December term, A. D. 1869.

RICHARD W TYERS, SURVIVING PARTNER of the late firm of Nott & Co.,
vs.
THE UNITED STATES.
} No. 6152.

And the said defendants, by their Att'y Gen'l, come and make answer to the petition of the claimant on file herein; and, not confessing the same, or any part thereof, do hereby most expressly deny each and every the allegations therein contained, and call for strict proof of the same.

And as to so much of said petition as sets forth and avers that the United States are indebted to said claimant in the sum of $11,902 97, the defendants say that they are not indebted to said claimant in said sum of money, nor any part thereof.

And as to so much of said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and never voluntarily aided, abetted, or given encouragement to rebellion against said Government, the said defendants deny the truth of said allegation, and call for proof thereof.

THOMAS H. TALBOT,
Ass't Att'y Gen'l.

6 In the Court of Claims.

RICHARD R. TYERS
vs.
THE UNITED STATES. } 6152.

And now, to wit, 23d of May, A. D. 1870, the court, upon due consideration of the premises, find in favor of the claimant, and do order, adjudge, and decree that the said Richard R. Tyers have and recover of and from the United States the sum of eleven thousand nine hundred & two dollars, ninety-seven cents, ($11,902 97.)

By the court:
A true copy of record.

7 In the Court of Claims, Dec. term, 1869.

RICHARD R. TYERS, &C.,
vs.
THE UNITED STATES. } 6152.

From the judgment rendered in the above-entitled cause on May 23, 1870, in favor of the claimant, the defendants, by their Attorney General, on this 8th July, 1870, make application for & give notice of an appeal to the Supreme Court of the United States, the amount in controversy therein exceeding three thousand dollars.

By the Ass't Att'y Gen'l,

THOMAS H. TALBOT.

Filed in the clerk's office 8 July, 1870.

AT CHAMBERS, 11 *July*, 1870.

Ordered, That the appeal, as prayed in the case of Richard R. Tyers vs. The United States, 6152, be allowed.

JOS. CASEY,
Ch. Justice.

8 In the Court of Claims.

RICHARD R. TYERS
vs.
THE UNITED STATES.

And the court finds the facts to be—

That, in 1857, several American vessels were captured and plundered by the Chinese, then at war with England. To redress these wrongs a convention was concluded between our Government and that of China, under which China paid in the manner provided (12 U. S. Stat., 1081) 500,000 taels, in full liquidation of all claims of American citizens. The amount specified was paid in Feb., 1859, in debentures, equivalent to coin, and from their use of which, from time to time, till 1864, the United States realized in coin $735,238 97.

By the act of Mar. 3rd, 1859, (12 U. S. L., 408,) Congress authorized the President to appoint two commissioners to examine and adjust the claims presented under the convention. The commissioners were ap-

pointed and acted in China, and the claims allowed by them were paid, and the balance, amounting to $267,159 56, was remitted in ster-
9 ling exchange, equivalent to coin to the United States, and by them invested in their bonds known as the ten-forties.

Among the claims presented to the commissioners in China was that of William Nott and Company, for the loss of $16,197 60 in Mexican dollars, belonging to that firm, and taken by the Chinese from the ship "Neva." The claim was disallowed by the commissioners.

Under the act of Congress of 22ond Feb., 1869, c. 44, entitled an act for the relief of Nott & Company, the petitioner presented the claim of Nott & Company to the Attorney General, who made the award thereon hereto annexed, and marked "A."

On the 8th day of March, 1869, the said Richard R. Tyers, a surviving partner as aforesaid, constituted George M. Miller his attorney, by the power of attorney hereto annexed, and marked "B."

On the 13th day of March, 1869, Mr. Miller, as attorney of the petitioner, called at the State Department and claimed the payment of the award according to its tenor, and sought to see the Secretary of State, and did not succeed in doing so. He was informed by Mr. Baker, the disbursing agent of the Department, at his office therein, that it was decided that the award should be paid in legal tenders, and not
10 in coin; and Mr. Baker tendered to Mr. Miller the sum of $38,242 53 in legal tenders, and a receipt therefor to be signed by Mr. Miller, as attorney for the claimant, which was as follows:

"Received of George E. Baker, agent for Department of State, $38,242 53, legal tenders, in payment of claim of Nott & Company, under the act of Congress, (passed Feb. 22ond, 1869,) referred to in award of the Attorney General, of which the foregoing is a copy.

"GEORGE M'CULLOCH MILLER,
"*For Nott & Co.*

"WASHINGTON, *Mar. 13th*, 1869."
$38,242 53.

Mr. Miller objected to such payment, and informed Mr. Baker that he (Mr. Miller) was not authorized to receive the legal tenders offered him in satisfaction of the award, to which Mr. Baker replied that although Mr. Miller took the amount in currency, he (Mr. Baker) supposed an appeal to the new Secretary on the decision and for payment of the balance would be open to the petitioner. Mr. Miller then signed the receipt, at the same time telling Mr. Baker he did so, reserving the right of the claimant to appeal from the decision of the Secretary; then Mr. Miller gave the receipt to Mr. Baker, and from him received $38,242 53 in legal tenders.

(The counsel for the d'f'ts objected to the statements and conversation of Mr. Miller and Mr. Baker.)

The petitioner, at all times, and his former partners, during
11 their lives, bore true allegiance to the United States, and neither he nor they, at any time, in any way, voluntarily aided, abetted, or gave encouragement to rebellion against said Government.

And we find as conclusions of law—

I. That said award was valid, and bound the United States to pay the sum awarded thereby in gold or silver coin of the currency of the United States.

II. That the said United States paid said sum of $38,242 53 in currency, after due notice that the same would be received only at its

market value, and on account of, and not in full satisfaction of, said award.

III. That said award was not satisfied by the payment of, said $38,242 53 in currency.

IV. That the claim of the petitioner is not barred by his receiving the $38,242 53 in currency, as above stated, nor by the receipt given therefor.

By the court:

A true copy.

(Indorsed:) Richard R. Tyers vs. The United States.

12 In the United States Court of Claims, December term, 1869.

RICHARD R. TYERS, SURVIVING PARTNER, vs. THE UNITED STATES. } No. 6152.

And now, at the time of the trial of this cause, come the defendants, by their Attorney General, and request the court to find the following facts:

1. Under an act for the relief of Nott and Co., approved February 22ond, 1869, Hon. William M. Evarts, Attorney General, made an award, which is correctly set forth in the copy annexed to the claimant's petition.

2. This award having been presented to Hon. E. B. Washburne, Secretary of State, by his direction the amount of the award was, on March 13th, 1869, paid in legal tender United States Treasury notes by George E. Baker, esq., the disbursing agent of the State Department, to the authorized agent of the parties to the fund, and he executed a receipt therefor in the following words and figures:

13 "Received of George E. Baker, agent for Department of State, thirty-eight thousand two hundred and forty-two dollars and fifty-three cents, "legal tender," in payment of claim of Nott & Company, under the act of Congress passed February 22ond, 1869, referred to in award of the Attorney General, of which the foregoing is a copy.

"Washington, March 13th, 1869.

"$38,242 53.

"GEORGE MACCULLOCH MILLER,
"*For Nott & Co.*"

3. Evidence was introduced by conversation, which took place between the above-named agent of Nott & Co., Mr. Miller, and officers of the State Department, the substance of which appears in the following extracts:

Mr. Miller testifies that, calling at the State Department between 10 and 11 o'clock on the 13th March, in reference to the payment of the award, he found Mr. Baker "engaged in writing a letter to me," and goes on further:

"He handed me, then, the letter he had written, stating that the decision was, that the amount of the award should be paid in legal tenders, and not in coin. I replied that I was not authorized to
14 receive it in currency. * * * Mr. Baker said that if we took

this amount in currency, he supposed we should still have an appeal open to us to the Secretary for the balance of the claim."

He testifies, also, that, going from Mr. Baker's room to the office of the latter, Mr. Chew, the chief clerk, said "that, even if we took the amount, he supposed we should still have an appeal open to us."

Further, after stating that he again called at Mr. Baker's office at twenty minutes to three on the same day, and that Mr. Baker was then ready to pay the amount of the award upon his signing a receipt, and that, with Mr. Baker's permission, he inserted in the receipt, after the word dollars, the words "legal tenders," he goes on—

"I signed the receipt, at the same time telling him that I did so, reserving our rights to appeal from the decision of the Secretary," and that Mr. Baker then repeated his previous statement, "with regard to our right to appeal, notwithstanding we signed the receipt."

Later, being asked as to the exact language of Mr. Baker, and, refreshing his memory by reading from a memorandum, he states—

"Mr. Baker said that, 'although we took this amount in currency, he supposed an appeal to the new Secretary on the decision, and
15 for payment of the balance, would be open to us.'"

Mr. Baker states:

"When Mr. Miller called again, I told him that was the decision of the Department; that we would pay in legal tenders. I don't know how long he took to consider that, but I think he very soon accepted it—made no protest against it. I remember that he made no protest, because I was surprised that he did not."

And upon cross-examination:

"I know that he made no formal objection at any rate. The impression is very distinct on my mind, for I expected he would."

4th. By introducing the testimony of Mr. Baker, the defence did not waive the objection made to the testimony of Mr. Miller, upon the subject of this conversation.

5. The commission which heard and decided claims upon this Chinese indemnity fund, allowed interest at the rate of twelve per cent. per annum, to December 31st, 1859. To the same date was interest allowed by Minister Burlingame, in 1864, upon a claim which he allowed, after its disallowance by the commission.

16 6. Upon the sums awarded, no interest whatever was allowed or paid, though the full payment of these awards was not completed until 1864, nearly five years after they were made, December 31st, 1859.

7. The full payment of the indemnity by the Chinese government, was not completed till 1864, and no interest was paid for this delay. The whole sum thus paid, was $735,238 97. Of this principal sum there remained after payment to claimants made in China, $223,102, which was remitted to the State Department, in Washington, in 1867 and 1868, in bills on London, which were sold at a premium, as gold, and invested in United States 10–40 bonds, at 101¾. The interest, also, was remitted and likewise invested, on March 1st, 1869, when, also, there was an investment of what had been received as interest on the earlier bonds purchased. Thus on that day, the whole fund with all accretions, including interest and premium on drafts on London, (equivalent to gold,) amounted to $409,287 00, or 183 per cent. of the smallest principal sum of the fund.

8. No presentation of any demand for the sum now claimed, is

17 shown to have been made to the State Department, subsequently to the payment made as above, on the 13th March, 1869.

THOMAS H. TALBOT,
Assistant Attorney General.

(Endorsement on original of the above-proposed findings:)

The 7th item is disallowed as to its statement that the full indemnity was not paid by the Chinese government till 1864, as the debentures were rec'd in 1859. All the other items allowed as correct statement of the evidence.

A true copy.

18 In the Court of Claims.

RICHARD R. TYERS, &c.,
vs.
THE UNITED STATES. } No. 6152.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, and the final judgment of the court thereon; of the application of the Attorney General for the defendants, for the allowance of an appeal, as filed in the clerk's office, July 8, 1870, and of the order of Chief Justice Casey, allowing the same; of the finding of facts and the conclusions of law on which the court founded its judgment; also, the proposed findings by defendants.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington, this 31st day of December, 1870.

[SEAL.]

JOHN RANDOLPH,
Ass't Clerk Court of Claims.

(Indorsement on cover:) No. 456. The United States, appellants, vs. Richard B. Tyers, surviving partner, &c. Court of Claims. Filed 31st December, 1870.